



December 19, 2022

To: U.S. Environmental Protection Agency and U.S. International Boundary and Water Commission
Via Email: Tijuana-Transboundary-EIS@epa.gov

Re: NEPA Final PEIS Comments for Tijuana River Watershed, USMCA Mitigation of Contaminated Transboundary Flows Project

Dear U.S. Environmental Protection Agency and U.S. International Boundary and Water Commission,

The Surfrider Foundation and Outdoor Outreach hereby submit these comments regarding the Final Programmatic Environmental Impact Statement ("PEIS") for the Tijuana River Watershed, United States-Mexico-Canada Agreement ("USMCA") Mitigation of Contaminated Transboundary Flows project. The Surfrider Foundation ("Surfrider") appreciates the U.S. Environmental Protection Agency's ("EPA") and the U.S. International Boundary and Water Commission's ("USIBWC") efforts to address contaminated transboundary flows that cause adverse public health and environmental impacts to the Tijuana River Watershed and surrounding coastlines. Surfrider and Outdoor Outreach also appreciate that the EPA and USIBWC are helping to find a solution to this coastal border water quality crisis.

Surfrider is a grassroots nonprofit organization dedicated to the protection and enjoyment of our ocean, waves, and beaches, for all people, through a powerful activist network. Surfrider's primary initiatives include protecting clean ocean water, ocean protection, coastal preservation, public beach access, and reducing plastic pollution – initiatives that all come into play in addressing the significant pollution at the U.S.-Mexico Border. Surfrider's San Diego Chapter has thousands of members, many of whom swim, surf, and recreate along the San Diego County coastline, including near the U.S.-Mexico Border. The Chapter is part of a nationwide network with over 500,000 supporters, activists and members.

Outdoor Outreach is a San Diego-based nonprofit that connects youth to the transformative power of the outdoors. The organization's vision is an outdoors for all that inspires and sustains healthy and vibrant communities. Since 1999, Outdoor Outreach has provided opportunities for more than 17,000 young people to explore their world, cultivate belonging, and discover what they're capable of. Outdoor Outreach prioritizes serving youth from communities historically impacted and marginalized by social and economic inequities, including those along the San

Diego border region. The transborder pollution impacting beach water quality in Imperial Beach, Silver Strand and Coronado has had a direct impact on the organization's ability to run programs for its youth participants. Between May and July, 2022, Outdoor Outreach has had to cancel or reschedule over 40 coastal recreational programs due to transborder pollution.

In July 2018, after Surfrider's San Diego Chapter had already engaged in decades long "No Border Sewage" and "Clean Border Water Now" campaigns, Surfrider filed a lawsuit against the USIBWC for its Clean Water Act violations affecting the waters of the U.S.-Mexico border region, including the coast off Imperial Beach and Coronado, California. Surfrider's lawsuit sought to protect the surfing, swimming, and other recreational resources of the San Diego County coast, defend threatened species and habitats, reduce trash pollution, and ensure clean coastal waters. Surfrider's lawsuit sought to compel wastewater infrastructure upgrades for the Tijuana River Valley, including those that improve interception and diversion of solid waste, wastewater collection and treatment, and water quality monitoring (with timely public notification of pollution). The lawsuit settled on the merits in April 2022 with a settlement agreement requiring many improvements for water quality designed to complement the USMCA¹ Comprehensive Infrastructure Solution. Surfrider is committed to seeing the full Comprehensive Infrastructure Solution implemented by EPA and USIBWC as soon as possible and will continue to advocate for full watershed protection so that our members and the public can enjoy this treasured coastal area.

Surfrider and Outdoor Outreach Commend the EPA and USIBWC in Selecting Alternative 2 Comprehensive Solution

Surfrider and Outdoor Outreach applaud the selection of Alternative 2 by the EPA and USIBWC as the most effective option for a comprehensive solution to the Tijuana River Watershed public health crisis and appreciate the diligent efforts made by those who worked on the thorough analysis. Surfrider and Outdoor Outreach have remained outspoken about the need for a strong, comprehensive alternative to address the egregious water pollution in the Tijuana River Valley that has plagued the watershed for decades and led to countless public health hazards, illnesses, and dire ecological conditions. While Alternative 2 includes core and supplemental projects, and closely aligns with the Comprehensive Infrastructure Solution and Alternative I-2 discussed in previous environmental reviews, we understand that this water quality issue is profound and long-standing, and ask that EPA and USIBWC consider the improved options as detailed below.

¹ USMCA section 821 mandates EPA, in coordination with eligible public entities, to carry out the planning, design, construction, operation and maintenance of high priority treatment works for solutions to pollution coming across the border from Mexico.

Current and Worsening Conditions Demand Ambitious Solutions

The need to address this public health crisis has been made even more apparent by the recent heavy storm that occurred from November 8 – 9, 2022, which caused transboundary flows that continued for 11 subsequent days, ending on November 20th. The storm resulted in 2.35 billion gallons of contaminated cross-border flows after just two days of rain. This is significantly more than the pivotal 2017 spill of 143 million gallons that catalyzed increased attention and action on this issue, including this very NEPA process. While the high quantity of flows during a rain event is often a natural part of the watershed, the contaminants they carry are not.

In 2021, the Tijuana Sloughs were closed 246 days, Imperial Beach was closed 71 days, Silver Strand 30 days, and the Coronado shoreline two days. With the implementation of new genetic-based testing in San Diego County in 2022, that is more sensitive to picking up signs of sewage and fecal contamination, we've already seen a significant increase in closure and sewage warning days. As of November 15, the Tijuana Sloughs have been closed for the entirety of 2022 (318 days). Meanwhile, Imperial Beach has already been closed 146 days, Silver Strand 74 days, and Coronado 35 days.

As the impacts from climate change and population growth increase in border communities, demands on Tijuana Watershed wastewater infrastructure can be expected to increase as well. This is why ambitious solutions are not only necessary to address toxic cross-border flows, but the only remaining responsible course of action. It is for this reason that Surfrider and Outdoor Outreach strongly advocate for the most protective options to the supplemental projects that have been analyzed and selected as part of the Final PEIS and urges EPA and USIBWC to reconsider these selections before cementing them in the record of decision (ROD).

Uncertainty and Cumulative Impacts Necessitate Use of the Precautionary Principle

The effects of climate change will impact all possible outcomes for core and supplemental projects. Therefore, the EPA and USIBWC must base project risk analyses on the ability to predict the effects of climate change. If the EPA and USIBWC cannot accurately predict the impacts of climate change (and they likely cannot because uncertainty is high), then they must err on the side of protection by employing the Precautionary Principle.² Additionally, the EPA and USIBWC must consider the cumulative impacts of all proposed and analyzed projects together and in combination with the uncertainties brought by climate change. When this holistic approach is taken, the most reasonable path forward becomes one in which the Precautionary Principle is prioritized and the options for each project with the highest level of protection to environmental and human health are selected.

²The Precautionary Principle, as defined at the 1998 Wingspread Conference states, "Where an activity raises threats of harm to the environment or human health, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically."

Relationship to Other Border Infrastructure Projects Requires Additional Advanced Planning

Comments captured by Code 7 in the Final PEIS include those related to a border barrier and how it might impact wastewater infrastructure project operations.

Surfrider signed onto the Draft PEIS comments submitted by David W. Gibson (Executive Officer of the San Diego Regional Water Quality Control Board) et al. and agrees that considerations should be made in any future planning, designing, and implementing of border projects. Surfrider understands the EPA and USIBWC response to this concern, but would urge the EPA and USIBWC to engage Customs and Border Patrol (“CBP”) during the design phase, prior to the start of construction, so that these considerations can be incorporated into the design of any border infrastructure moving forward, as it may be too late once construction has begun for meaningful and necessary changes to be made that minimize the impact on cross-border flows, especially considering that the EPA and USIBWC have concerns themselves about the assessment CBP has conducted as the basis for any design.

Reducing Discharge from Punta Bandera is Critical to San Diego County Public Health

Temporary Treatment of Flows During Construction: Necessary for Protecting Public Health

Code 9 of public comments refers to other projects considered, including the temporary treatment of flows at Punta Bandera (PB) during the San Antonio de los Buenos Treatment Plant (SABTP) construction phase. In response to these comments, EPA and USIBWC stated their decision to eliminate any interim measures to reduce discharges of untreated wastewater via the San Antonio de los Buenos (SAB) Creek, which flows directly into the ocean. This is problematic because untreated discharges at the Punta Bandera coastal outfall into SAB Creek have been determined to be one of the most significant sources of beach-closure-causing pollution in San Diego County.³ While improvements to SABTP should eventually minimize PB discharges, it is clear that the construction phase will impact the capacity of SABTP to treat water, thus resulting in an increase in untreated discharges at PB. Thus, one can expect exposure to toxic wastewater and beach closures in San Diego to increase during the two-year construction period. Allowing this anticipated outcome to occur when known and feasible preventions exist is unacceptable.

Surfrider and Outdoor Outreach urge the EPA and USIBWC to reconsider temporary treatment of PB flows while construction at the SABTP is underway. It is the responsibility of both the EPA and the USIBWC to minimize any harm caused by the projects they propose, analyze, implement, and manage. Failing to do so is a failure to uphold the missions of each agency. The Precautionary Principle comes into play here and must be taken into account not only in the planning process but also in the construction, operation, maintenance, and evaluation processes as well. We acknowledge and commend the application of the Precautionary

³ Scripps Institution of Oceanography modeling study on the relationship between coastal discharges of untreated wastewater via SAB Creek at Punta Bandera, Mexico, and the resultant impacts to beaches in southern San Diego County (Feddersen et al., 2020).

Principle throughout the Final PEIS, but feel it is necessary to point out that applying the Precautionary Principle at only one phase of this enormous and impactful multi-tiered project and not continuing to apply it at all phases will surely undermine the application at any single phase and allow for disregard of critical short-term impacts from the project and the harm they can cause.

Core Project B2: The More Protective Option

Surfrider and Outdoor Outreach strongly recommend that the EPA and USIBWC reconsider their preferred option (B1) for Project B (Tijuana Canyon Flows to ITP), in which they state that it was selected because it would be considerably less expensive, and instead adopt the more protective option (B2). Project B would reduce the discharges of untreated wastewater to the Pacific Ocean via San Antonio de los Buenos (SAB) Creek. While expense is certainly an important consideration to assess, it should not stand in the way of meaningful and necessary improvements. One could argue that Alternative 1 is the preferred option because it is less expensive, yet EPA selected Alternative 2 because of the increased capacity and impact it would have and because Alternative 1 just wasn't good enough. The same applies here. B1 isn't good enough – it won't have as significant an impact as would B2. It is worth the additional work to cover the expense for the outcomes B2 offers when compared with B1.

Augmentation of SABTP Capacity: A Critical Step

Surfrider and Outdoor Outreach are disappointed by the decision to eliminate Project 8 (Upgrade the SABTP to Reduce Untreated Wastewater to Coast with a new 10-MGD or 40-MGD plant at the existing SABTP site) and instead rely on a 5-MGD activated sludge plant to provide sufficient treatment through the year 2050. This decision assumes there will be adequate wastewater flow collection in the surrounding area and likely underestimates the need to account for significant population growth in the coastal area. The protection of coastal water quality in the United States will depend on the health of coastal water quality in Mexico near the border region as well. The worsening wastewater conditions described above, combined with continued exponential population growth, uncertainty brought by climate change, and the cumulative impacts of the enormous and complex border wastewater treatment system will surely lead to unprecedented and unknown amounts of untreated wastewater flowing to the coast. Plans for improvements made through this bi-national effort have taken decades to achieve and are the result of dedicated and tireless advocates, community members, elected officials, and government agencies on both sides of the border. It has taken multiple illnesses, egregious CWA violations, multi-party lawsuits, and a public health crisis on an alarming scale to catalyze this type of action by our federal agencies. It is unclear how long it could take for another opportunity like this to arise. It would be a waste of this unique opportunity to not design improvements to accommodate higher amounts of treatment capacity analyzed.

The year 2050 is less than 30 years away. Construction alone will take years once it begins and by the time it is complete, these improvements may not even be able to accommodate the demand. Planning must account for uncertainty and must go above and beyond today's predictive models. Adding another 5-10 MGD of capacity or more to the SABTP as part of this comprehensive solution is another critical step towards achieving the goals of this process and addressing this public health crisis in a lasting and meaningful way.

SABTP Ocean Outfall: An Important and Overlooked Feature

Surfrider and Outdoor Outreach appreciate the explanation and consideration to our request for an offshore ocean outfall pipe at SABTP. We are also pleased with Mexico's recent commitment, as part of the Minute 328 Treaty, to construct an 18mgd SABTP with an ocean outfall. However, it remains unclear when or whether this project will take place. It's also unclear whether this project would complement, correspond with, or replace the Project G: New SABTP, as proposed in this Final PEIS. Therefore, we continue to strongly urge the EPA and USIBWC to include an outfall at SABTP in the preferred alternative as a critical backstop to reduce beach water quality impacts from insufficiently treated effluent. According to the 2020 Scripps Institution of Oceanography report to the North American Development Bank and EPA, discharges from the SABTP and Punta Bandera are the main cause of beach closures between Border Field State Beach and Coronado. Any comprehensive solution to the border beach water quality crisis must address both inflows to, and outflows from, the SABTP. In reality, EPA and USIBWC have little control over the quality of discharges from SABTP. However, with the addition of an ocean outfall at SABTP, we can at least ensure that discharges are having less of an impact on border region beach water quality and environmental health.

Thank you for your consideration of these comments regarding the Final PEIS for the USMCA Mitigation of Contaminated Transboundary Flows project and the EPA and USIBWC's efforts to address the significant pollution affecting the U.S.-Mexico border region. We appreciate your careful and thorough assessment of the impacts for the proposed projects. Through the above comments, we have emphasized that in order to comprehensively address the immense, decades-long issue of contaminated cross-border pollution that both the most ambitious "core" and "supplemental" projects are necessary. **We commend the EPA and USIBWC's selection of Alternative 2 and urge its implementation as soon as possible. We also ask that EPA and USIBWC reconsider the project options they have selected in the Final PEIS and instead take action as comprehensively as possible to implement the most protective project option at every opportunity.**

Sincerely,

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